MT LEGISLATIVE HISTORY

Chapter 396 1929

Bill H _____ Ⓢ 205 Original bill & hist. ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	FEB 9	✓C	Hearing Date(s)	JAN 29	✓C
Exec Action	MAR 15	✓C	& Exec Action	_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C		_____	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

CHAPTER NO. 396

SENATE BILL NO. 205

INTRODUCED BY AKLESTAD, KOLSTAD, MEHRENS, THOMAS, E. SMITH, NELSON, GALT, O'HARA

IN THE SENATE

January 23, 1979	Introduced and referred to Committee on Judiciary.
January 30, 1979	Committee recommend bill do pass as amended. Report adopted.
January 31, 1979	Printed and placed on members' desks.
February 1, 1979	Second reading, do pass.
February 2, 1979	Considered correctly engrossed.
February 3, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 5, 1979	Introduced and referred to Committee on Judiciary.
March 15, 1979	Committee recommend bill be concurred in. Report adopted.
March 16, 1979	Second reading, concurred in.
March 20, 1979	Third reading, concurred in.

IN THE SENATE

March 21, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

SENATE BILL NO. 205

INTRODUCED BY Halligan Keating Mehrens Thomas E. Smith Nelson Hoot O'Hara

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 46-18-222, MCA, TO DELETE THE EXCEPTION RELATING TO THE ABSENCE OF SERIOUS BODILY INJURY TO THE VICTIM FROM THE LIST OF EXCEPTIONS TO MANDATORY MINIMUM SENTENCES AND CERTAIN RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(3), 46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution; or

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; ~~or~~

~~(5) where applicable, no serious bodily injury was inflicted on the victim.~~"

-End-

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

	BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
33.	SB-153	1/19/79	1/26/79	1/26/79		1/26/79				
34.	HB-69	1/19/79	"	Temp. Laid on 1/8/79						
35.	~~HB-85~~	~~1/26/79~~	1/25/79	1/26/79				1/26/79		
36.	HB-95	1/26/79	1/26/79	1/26/79				1/26/79		
37.	HB-96	1/26/79	1/25/79	1/26/79					1/26/79	
38.	SB-132	1/22/79	1/22/79	Tabled 1/29/79						
39.	SB-149	1/22/79	1/22/79	1/30/79			1/30/79			
40.	SB-150	1/23/79	1/29/79	1/29/79		1/29/79				
41.	SB-202	1/23/79	1/30/79	2/5/79			2/5/79			
42.	SB-204	1/23/79	1/29/79	1/30/79			1/29/79			
43.	SB-205	1/23/79	1/29/79	1/30/79			1/29/79			
44.	SB-207	1/23/79	2/5/79	2/8/79		2/7/79				
45.	SB-211	1/23/79	2/2/79	Tabled 2/2/79						
46.	HB-33	1/23/79	2/28/79	2/28/79				2/28/79		
47.	HB-165	1/23/79	1/29/79	1/29/79				1/29/79		
48.	HB-167	1/23/79	1/29/79	1/29/79					1/29/79	

Use a separate sheet for Senate, House Bills and Resolutions

language be changed by striking what is there and adding in lieu thereof, "the defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail which presumption may be rebutted." He commented that this would get the presumption on the side of the state and then the defendant has to assume the burden.

Senator Lensink said that the committee will not take action today and this will give time to propose amendments. The hearing on this bill closed at 10:50 a.m.

CONSIDERATION OF SENATE BILL 205:

Senator Aklestad gave an explanation of this bill, which is an act to delete the exception relating to the absence of serious bodily injury to the victim from the list of exceptions to mandatory minimum sentences and certain restrictions on deferred imposition and suspended execution of sentence.

He introduced Tom Honzel, representing the Montana Association of County Attorneys, who stated that in 1977, the state passed the mandatory minimum sentencing act for major crimes and criminal sale of dangerous drugs. He stated that the most common place where this bill would apply would be in the case of armed robberies and there have been no infliction of bodily injury and it would seem to be an exception to it.

There were no further proponents and no opponents.

Senator Aklestad stated that he was trying to strengthen the laws of the state of Montana and again felt that some victims were being victimized and criminals were being coddled and he did not want to make this a police state.

Senator Towe commented that he was concerned where there might be a threat but no bodily injury and wondered if the words "or threat thereof" should be inserted. Mr. Honzel explained that this does conflict with one section. He did not think that it should be treated in its entirety.

Senator Van Valkenburg commented that this provision of law might be an incentive for a person not to inflict bodily harm to another - say, in the case of a hostage or something. Mr. Honzel replied that you would still have the other exceptions. He thought that if there were any exceptions there, it would be minimal.

There was some discussion on the deterring effect of exclusion of bodily injury and the hearing on this bill was closed at 10:10 a.m.

CONSIDERATION OF SENATE BILL 197:

Senator Van Valkenburg gave an explanation of this bill, which is an act to authorize the use of videotape equipment to record the testimony of the victim in a case arising under felony sexual assault.

Date 1/29/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 29, 1979

The nineteenth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building on the above date by Senator Everett R. Lensink at 4:28 p.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 204:

Senator Turnage moved that we amend this bill by striking the lines 19 through 23 and insert, "defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which provision is rebuttable." The motion carried unanimously.

Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 205:

Senator Brown commented how this would apply for students in college taking someone out of a dormitory; it could be considered kidnapping. The judge would have to consider it as mandatory minimum sentence.

Senator Turnage said that you have to give the courts some flexibility. He said that if we had a mandatory sentence for every single offense, there would not be enough jails.

Senator Towe said that he was apprehensive about the broadening of this application.

Senator Lensink wondered if the reason for mandatory sentences is thatthe judges weren't doing a good job. Senator Van Valkenburg said that he thought the judges are reacting to public pressure and are doing a much better job of handing out sentences. He stated that the prisons are full and the county jails are 3/4 full. He did not feel that we should limit the discretion of fairly experienced people about who should go to prison and who should not.

Senator Turnage moved that on page 2, lines 10 and 11, the bill be amended to read, "unless a weapon was used in the commission of the offense" and also amend the title. The motion carried unanimously. He also moved to amend the title by striking "delete" and insert "to restrict the exceptions". The motion carried. Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 132:

Senator Brown moved that this bill cannot be amended to

Date 4-22-79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

Please sign & return to secretary

SB-197
204
BILL 205
HB-165
" 167

SENATE Judiciary COMMITTEE

VISITORS' REGISTER

DATE 1/30/

NAME	REPRESENTING	BILL #	Please note bill no. (check one) SUPPORT	OPP
Karlen Moe	myself			
Karen Cecka	myself			
Christena Hansen	myself			
Karen D. Townsend	Missoula County Attorney	197	✓	
Mike Rinial	MCAA	204, 205	✓	
Tim Hargel	County Attorney	197 204 205		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SB-197
204
BILL 205
HB-165
" 162

SENATE Judiciary COMMITTEE

VISITORS' REGISTER

DATE 1/30/

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Karlen Moe	myself			
Karen Jerka	myself			
Christena Hanson	myself			
Karen S Townsend	Missoula County Attorney	197	✓	
Mike Ruiel	MCHA	204, 205	✓	
Tim Hoyel	County Attorney	197 204 205		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 149	clarify Montan recall act	2/5	Hazelbaker	2/9	be concurred	3/9
SB 204	permit court-defendant convicted of deliberate homicide to bail, etc.	2/5	Aklestad	2/9	concurr	3/5
SB 205	delete exception - absence of serious bodily injury to victim - mandatory minimum sentences, etc.	2/5	Alkestad	2/9	be concurred	3/15
HB 580	not a defense to issuing a bad check etc.	2/6	Fagg	2/12	pass	2/12
HB 586	prohibit publication - injure candidate, etc.	2/6	Teague	2/12	table	2/12
HB 602	criminal action - compulsion is an affirmative defense etc.	2/6	Sivertson	2/12	pass	2/12

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 9, 1979

The regular meeting of the Judiciary Committee was called to order at 8:00 a.m. in room 436 of the Capitol Building by Chairman John Scully. All members were present except Representative Eudaily, excused.

Bills scheduled were Senate Bills 204, 205 and 149 and House Bills 568 and 569.

SENATE BILL NO. 204: Senator Aklestad. The bill provides for a rebuttable presumption that a defendant convicted of deliberate homicide is a danger to others and not entitled to bail. He passed out a hand-out, exhibit #1.

TOM HONZEL: County Attorneys Association. He quoted a case that he was familiar with. Sometimes, a deliberate homicide is a family type affair and may be the only crime that a person might commit. With that type of appeal a person may be let out. He elaborated briefly.

There were no other proponents and no opponents.

SENATOR AKLESTAD: I would hope that we would quit coddling criminals and pass this bill.

REPRESENTATIVE KEEDY: Asked about the defendants right to overcome the presumption. Mr. Honzel stated that in some cases it might not happen again.

The hearing closed on Senate Bill 204.

SENATE BILL NO. 205: Senator Aklestad. A person might rob a store and might not be put into the minimum sentencing category. I think when they walk into a store and have a weapon of some kind then I would think we could pull this person out of this category and give him at least two years. At least it gives the judge a little latitude. I would hope that this would have a deterrant effect because the individual would know what is going to happen.

TOM HONZEL: County Attorneys Association. The mandatory minimum sentence was passed in 1977, and when Representative Ramirez put that bill together he thought there might be cases where the mandatory minimum sentence might apply. As the Senator has pointed out, there are cases where they do not inflict bodily injury and because no bodily injury was inflicted they might argue that they take into consideration subsection 5. We think it makes much more sense. I think we should add the language "unless a weapon". Discussion about this.

REPRESENTATIVE KEEDY: Would you please mention one or more of the offenses for whcih a mandatory minimum sentence could be commited without a weapon.

TOM HONZEL: Kidnapping, or maybe drugs. There was brief discussion. Exhibit #2.

The hearing closed on Senate Bill 205.

SENATE BILL NO. 149: Senator Hazelbaker. This bill was introduced to clarify the recall act, to correct an oversight. The counties have had a few problems with it. The League of Women Voters offered some amendments to make it more clear with the final approval of the Judiciary Committee in the Senate. There was certain language on page 2 that was changed.

REPRESENTATIVE LORY: He questioned the number of votes needed for the recall, page 2, lines 15 and 16.

There was brief discussion and the hearing closed on Senate Bill 149. Exhibit #6.

HOUSE BILL NO. 569: Representative Iverson. This is an attempt to tighten the defense for more protection for the officer. It is something that we should be doing something about. I wanted to learn if this was something that we would be able to do.

TOM HONZEL: Montana County Attorneys. Entrapment is nothing new to the law. It has always been recognized as a defense in Montana law. It is recognized in the Montana statutes. Read down to line 18, what this bill does, it recognizes that it is an affirmative defense. And second, it requires this defense to be proven by a preponderance of the evidence. Patterson vs N. Y., this case has been to the Supreme Court, requiring that you prove by a preponderance of evidence it does not violate the constitution. We are not deviating with this bill or the other one that you will hear on Monday.

There is one problem that we see. The reason to have an affirmative defense is to give notice prior to trial. I would have some language to amend. I would ask that you give consideration to give it some consistency in the law.

REPRESENTATIVE KEMMIS: The state is required to show all of the elements of the crime. Are you shifting the burden away from the state.

MR. HONZEL: The Supreme Court said "no".

SENATE BILL NO. 426: Representative Pavlovich moved to amend on page 1, line 22 and the title, line 7. The motion to amend carried with Representatives Conroy and Anderson voting "no".

Representative Pavlovich moved "be concurred in as amended". The motion carried with Representatives Day, Anderson, Curtiss, Iverson, Conroy and Roth voting "no".

SENATE BILL NO. 205: Representative Pavlovich moved "be concurred in". The motion carried with the vote unanimous.

SENATE BILL NO. 65: Representative Eudaily reported on the sub-committee. He explained how long they had worked on the bill, what had been accomplished and introduced Joanne Woodgerd and Dennis Taylor who had assisted with compiling and revising the election laws as contained in the bill.

JOANNE WOODGERD: She explained that she was on special assignment in order to work on this bill. She went through the bill section by section and explained it, and also said that most are merely housekeeping amendments of those that are being submitted for the committee to study. I will not discuss any form or grammatical changes. The bill as introduced would have put city and county officials on the ballot at the November election of odd numbered years. The Senate put the county officials back on even numbered years as they are now. Only city and special elections would be in odd numbered years. It requires all polling places to be open from 8 to 8 if over 100 voters and if under 100 voters it will be from 12 to 8. There is a provision in the bill which allows for a counting board to start counting before the polls close. They must be sequestored. The clerks can appoint a marshall to see that they are sequestored.

School district trustees and clerks will run the school district elections. These are the substantive amendments put in by the Senate. The first 214 sections of the bill deal with title 13 which deals with elections. Most are mechanical changes. Page 1 through 177 are the ones that pertain to the revised election sections. They are the ones the interim has dealt with most. 177 through 220 concern campaign finance and practice. 220 through 325 are mostly recode, referring to election administrators and recode of existing law.

Representative Teague asked why the 20th year referring to Page 13, line 18.

SENATE BILL NO. 205

INTRODUCED BY AKLESTAD, KOLSTAD, MEHRENS, THOMAS, E. SMITH, NELSON, GALT, O'HARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 46-18-222, MCA, TO ~~DELETE~~ RESTRICT THE EXCEPTION RELATING TO THE ABSENCE OF SERIOUS BODILY INJURY TO THE VICTIM FROM THE LIST OF EXCEPTIONS TO MANDATORY MINIMUM SENTENCES AND CERTAIN RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(3), 46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution; ~~or~~

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; ~~or~~

~~(5) where applicable, no serious bodily injury was inflicted on the victim.~~

(5) WHERE APPLICABLE, NO SERIOUS BODILY INJURY WAS INFLICTED ON THE VICTIM UNLESS A WEAPON WAS USED IN THE COMMISSION OF THE OFFENSE."

-End-

REFERENCE BILL